



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

June 8, 2004

Ms. Rebecca B. Durrett  
Fletcher & Springer, L.L.P.  
8750 North Central Expressway, 16<sup>th</sup> Floor  
Dallas, Texas 75231

OR2004-4621

Dear Ms. Durrett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 203112.

The City of Krugerville (the "city"), which you represent, received three requests from the same requestor. The first request is for information relating to a named police officer, the city's hiring process, and the city's policy on dealing with public complaints. The second request is for the named officer's resignation, "if there is one on file." The third request is for information relating to a new police vehicle that was involved in a recent accident. You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code.<sup>1</sup>

We note that the first request for information is the subject of Open Records Letter No. 2004-2794 (2004). That ruling concludes that: (1) the city must release completed evaluations under section 552.022(a)(1) of the Government Code; (2) the city also must release any information encompassed by the first request that it had previously released to a member of the public; and (3) the city may withhold the remaining information encompassed by the first request under section 552.103 as information relating to pending litigation, except for any information that the opposing party in the litigation already has seen or to which he has

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<sup>1</sup>With regard to the third request, you also assert that "[t]he requested material is ambiguous and vague as to who it is referring to and what specific accident [the requestor] is referring to." We note that a governmental body that receives a request for information must make a good-faith effort to relate the request to any responsive information that is within the governmental body's possession or control. *See* Open Records Decision No. 561 at 8-9 (1990).

already had access. You do not inform us of any change in the law, facts, or circumstances on which the prior ruling is based. We therefore conclude that Open Records Letter No. 2004-2794 (2004) is dispositive of all of the requested information that is the subject of that ruling. Thus, with regard to that information, the city must comply with the prior ruling.<sup>2</sup>

Next, we address the city's obligations with respect to the second and third requests for information. Section 552.301 of the Government Code prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302.

As of the date of this decision, the city has not submitted any information encompassed by the second and third requests that the city seeks to withhold. Thus, with respect to the information that is encompassed by those requests, the city has not complied with the requirements of section 552.301. Any information that is responsive to the second and third requests is therefore presumed to be public and must be released, unless there is a compelling reason to withhold any of the information at issue from the public. *See* Gov't Code § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ). The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982).

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<sup>2</sup>*See* Gov't Code § 552.301(a); Open Records Decision No. 673 at 6-7 (2001) (attorney general decision constitutes first type of previous determination under Gov't Code § 552.301(a) when (1) precisely same records or information were previously submitted under Gov't Code § 552.301(e)(1)(D); (2) same governmental body previously requested and received ruling; (3) prior ruling concluded that same records or information are or are not excepted from disclosure; and (4) law, facts, and circumstances on which prior ruling was based have not changed).

Although the city raises section 552.103, this section is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See* Gov't Code § 552.007; *Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (Gov't Code § 552.103 may be waived); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 subject to waiver). The city's claim under section 552.103 does not present a compelling reason for non-disclosure under section 552.302. In failing to comply with the requirements of section 552.301, the city has waived section 552.103. *See* Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Therefore, the city may not withhold any of the information that is encompassed by the second and third requests under section 552.103. As the city raises no other exception to the disclosure of that information, it must be released.

In summary: (1) the city must comply with Open Records Letter No. 2004-2794 (2004) with regard to the information that is the subject of that ruling; and (2) the rest of the requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

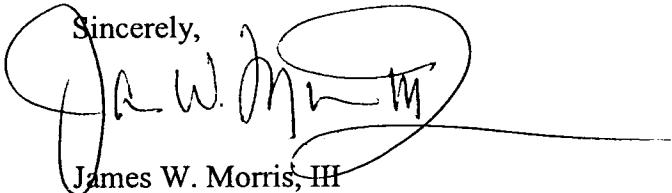
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris, III", with a long horizontal flourish extending to the right.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 203112

c: Mr. Johnny Hammons  
101 Baseline Road  
Krugerville, Texas 76227